

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Edward Guy Payne, Jr.,

Petitioner,

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State of Washington,

Respondent.

CASE NO. 3:20-cv-05296-RJB-JRC

ORDER

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. 3.

Before the Court are two motions filed by petitioner: motion for vicarious exhaustion (Dkt. 4) and motion for extension (Dkt. 6). The Court denies the motion for vicarious exhaustion (Dkt. 4) and grants the motion for extension (Dkt. 6).

1. Motion for Vicarious Exhaustion (Dkt. 4)

Petitioner moves for the Court to allow him to “vicariously” exhaust his state court remedies through a petition filed by another individual, non-party Scott Fischer. Dkt. 4. Petitioner contends that if a class member exhausts administrative remedies, that is enough for “all similarly situated to be considered as having exhausted remedies.” *Id.* at 2. However,

1 petitioner is not a part of a class action and is proceeding *pro se* in a habeas petitioner. *See* Dkt.
2 3. Moreover, the Court has directed petitioner to file an amended petition and has not yet
3 directed respondent to file an answer. Dkt. 5. Therefore, any consideration of petitioner's
4 exhaustion of his state court remedies is not before the Court at this time. Accordingly, the
5 motion is denied. *See Menzies v. Washington*, 2020 WL 2800659, at *1 (W.D. Wash. May 28,
6 2020) (motion for vicarious exhaustion in habeas case was meritless); *Johnson v. Washington*,
7 2020 WL 2947443, at *2 (W.D. Wash. Apr. 16, 2020), *report and recommendation adopted*,
8 2020 WL 2924059 (W.D. Wash. June 2, 2020) (same).

9 **2. Motion for Extension (Dkt. 6)**

10 Petitioner moves for a 30 to 60-day extension to file his amended petition which was due
11 on or before May 30, 2020 because of "the length of the quarantine", which the Court interprets
12 as related to the COVID-19 pandemic. Dkt. 5, 6. The Court finds that the ongoing health crisis is
13 good cause for an extension. Thus, petitioner's motion (Dkt. 6) is granted and his amended
14 petition is due on or before July 30, 2020.

15 Dated this 11th day of June, 2020.

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J. Richard Creatura
United States Magistrate Judge